IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.107 OF 2005

Smt.Pushpa Shankar More. ...Petitioner.

Vs.

Vikram Shantaram Ghole. ...Respondent.

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Mr.G.S.Godbole for the Petitioner.

Mr.R.N.Sanghavi for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 20, 2006.

P.C. :

The Appellate Court has entered a finding that the suit is liable to be decreed on the ground of default in the payment of rent and on the ground of the tenant having made a permanent construction.

For the reasons which are indicated hereinafter, the decree for eviction is sustained

on the ground of default in the payment of rent.

A notice of demand was issued by the landlord on 1st June 1994 claiming arrears onwards from 1st June 1993. Admittedly neither the arrears were paid nor was an application made to the Trial Court for fixation of standard rent within a period of thirty days from the receipt of notice. The Appellate Court has noted that the first day of hearing was 20th April 1995 which statement is not disputed in the course of hearing in the submissions urged on behalf of the Petitioner. According to the Petitioner, an amount of Rs.1200/- was remitted in the year 1997 and a Money Order was remitted in the year 1998 in the amount of Rs.2000/-. The undisputed facts before the Court would show that all the arrears of rent inclusive of interest at 9% together with the costs of the suit were not deposited on or before the first date of hearing. In these circumstances, a decree for eviction is liable to be passed and the finding of the Appellate Court has to be confirmed.

On behalf of the Petitioner an attempt has been made to submit that the amount of Rs.55 which

was demanded on account of monthly rent was excessive because when earlier the Court Receiver was in possession, the rent was Rs.20/- per month. This submission cannot be countenanced for more than one reason. Firstly even assuming that the Petitioner had a dispute about the rent, it would have been open to the tenant to file an application for fixation of standard rent which admittedly has not been done. That apart, in para 5 of the judgment of the Trial Court an admission has been recorded that the tenant had paid Rs.80.85 to the Plaintiff, out of which Rs.55/- was for rent and Rs.25.85 was for taxes. That is hence the agreed rent.

There is, therefore, no merit in the petition. For these reasons, I am of the view that the exercise of supervisory jurisdiction under Article 227 of the Constitution is not warranted and the decree for eviction on the ground of arrears has to be confirmed. The Petition is accordingly dismissed. However, time to vacate the premises is granted to the Petitioner until 30th June 2007 subject to the filing of the usual undertaking within a period of four weeks from

today.

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